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In The

Supreme Court of the United States

October Term, 1968

No. 443

PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Petitioner

v.

BESSEMER AND LAKE ERIE RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
LEHIGH VALLEY RAILROAD COMPANY,
THE NEW YORK CENTRAL RAILROAD COMPANY,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
THE DELAWARE AND HUDSON RAILROAD CORPORATION, READING COMPANY,
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY,
WESTERN MARYLAND RAILWAY COMPANY,
ERIE LACKAWANNA RAILROAD COMPANY,
MONTOUR RAILROAD COMPANY,
THE MONONGAHELA RAILROAD COMPANY,
PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY COMPANY,
Respondents

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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INDEX

PAGE

Supplemental Appendix to Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania:

V. Opinion of the Superior Court of Pennsylvania 81

VI. Decisions of the Pennsylvania Public Utility Commission:

Decision at Complaint Docket No. 18018 94

Decision at Petition 7 119

Decision at Petition 7 and Complaint Docket No. 18018 135

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

V.

OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA

(210 Pa. Superior Ct. 7, 232 A. 2d 220)

Opinion by Ervin, P. J., June 16, 1967:

These appeals by eleven railroads operating in Pennsylvania are from two orders of the Pennsylvania Public Utility Commission dated November 22, 1965 and December 19, 1966 ordering the railroads to promulgate appropriate operating rules to provide flagging protection "when a train stops [or is moving] under circumstances in which it may be overtaken by another train." In general, appellants contend that flagging protection is no longer necessary under automatic block and similar signal systems.

On July 22, 1964 the Co-Operative Legislative Committee, Railroad Brotherhoods, acting through three of its members, filed a complaint at C.18018 against the Pittsburgh & Lake Erie R.R. Co., alleging the railroad had, in April of 1964, by a note to its Rule 99, eliminated flagging protection against following trains on the same track when operating under automatic block signal or traffic control system rules; that such procedure was unsafe, and asking the commission to order P. & L. E. to

"reinstitute adequate and proper flag protection" in its system in Pennsylvania.

On October 26, 1964 the Brotherhoods Committee filed a petition (Docketed at P.7), served on all railroads operating in the state (including the P. & L. E. R.R., Appeal No. 141, March T., 1966), alleging that *some* railroads, by amendment to so-called Rule 99, eliminated flag protection in cases of trains operating under "locomotive cab signal system, automatic block signal system, or manual block signal system rules"; that proper safety measures required flagging under such circumstances. Accordingly the petition asked that the commission promulgate a regulation requiring flagging protection "when a train stops under circumstances in which it may be overtaken by another train, regardless of whether or not such train or trains are operating under locomotive cab, automatic block or manual block signal system rules." The railroad appellants filed separate answers, admitting in some instances that flagging had been eliminated as to trains operating under automatic signal system or traffic control system rules, and denying there was any necessity, in regard to safety, for the promulgation of rules as to flagging in automatic signal systems. The carriers, in fact, contended the use of flagging procedures in automatic block territory would be a step backward to outdated methods and a positive impediment to safety.

Thereafter the commission held separate hearings on Dockets C.18018 and P.7. Witnesses for the Brotherhoods gave testimony tending to show the necessity of maintaining flagging rules. The carriers presented testimony to show that resort to flagging in automatic block signal and kindred signal systems, hindered, rather than enhanced, safety. The commission issued separate orders at C.18018

(in No. 142) and in P.7 (Nos. 133-144), both orders being dated November 22, 1965. The commission order at P.7, of November 22, 1965, states: "For many years it was the custom and practice of all railroads operating within Pennsylvania to require, generally by application of Rule 99, that stopped trains be protected against following movements by flagmen . . . and the carriers have considered this rear-end flag protection essential to safe operation." The commission explained that the automatic system involves a "fail-safe" principle, whereby a break in the electrical circuit will actuate a restrictive signal aspect. Automatic signal malfunctions may result in a "false-proceed" signal, or a "false-restrictive" failure, the latter involving a more restrictive signal aspect than is warranted by track conditions. I. C. C. records showed 58 false proceed failures in the United States on all railroads in 1964, while the Penna. R. R. reported 2,422 false restrictive failures on its system in one year. The commission found that the elimination of flag protection jeopardizes the safety of the public and railroad employes and that flag protection *augmenting* that furnished by signals, was essential, whether the signals were manual or automatic.

Accordingly the commission issued an order at Docket P.7 providing that all railroads operating in the state promulgate rules to require flag protection "for trains moving [or stopped] on main or secondary tracks, under circumstances in which such trains, may be overtaken by following trains . . . in manual block signal, automatic block signal, centralized traffic control or locomotive cab signal territories, *except* within the limits of interlocking plants, at stations where passenger trains are making normal station stops, within the limits of a classification

on storage yard and manual block territory protected by an absolute block." (Emphasis supplied) A note to the order stated that when trains are operating under automatic block signal system (and like systems) flagging requirements "will have been complied with when full protection is afforded against trains moving at restricted speed." The order at C.18018 directed P. & L. E. R.R. to operate its trains consistently with the above quoted order, designated as Rule 16 of the commission. The railroads appealed to the Superior Court from the orders of the commission dated November 22, 1965 at Dockets C.18018 and P.7, and all appeals were consolidated for argument. On March 15, 1966 this Court granted the petition of the commission for remission of the record. The commission then sent a letter to counsel of record in Dockets P.7 and C.18018, quoting the petition for remand and stating in general that the parties had difficulty in interpreting the commission's order of November 22, 1965; that there was confusion, as applied to certain railroads, in the application of such terms as "(1) interlocking plants and the limits thereof; (2) classification yards and the limits thereof; (3) storage yards and the limits thereof; . . . (6) main track; (7) secondary track; . . . (12) train; (13) normal station stops; (14) absolute block; . . ." etc. Pursuant to this letter further joint hearings were held on Dockets P.7 and C.18018 and incorporated in a supplemental record. Testimony and exhibits were presented as to the meaning of various terms relating to flagging protection. The commission then entered its order of December 19, 1966 stating that advice received showed "adherence to Rule 16 [November 22, 1965 order] lacks uniformity and on some railroads is practically nonexistent" and that there was confusion as to the meaning of the terms "standard flagging equipment," "trains moving on

main or secondary tracks," and "within the limits of a classification or storage yard." The commission then stated that "the basic requirements of our order [of November 22, 1965] are in the general interest of the public and should not be materially disturbed. However, in order to eliminate the apparent confusion and misinterpretation of certain diction used in our existing order, flagging should be performed on main tracks, secondary tracks, or on any tracks used for the movement of trains, where a train stopped or moving, may be overtaken by another train, whether within a yard proper; adjacent to the entrance to a yard; or in areas designated by a railroad as yard limit territory." The commission then quoted the November 22, 1965 order in P.7 and also at C.18018, and "modified" it to direct all railroads to promulgate rules "in conformity with the following: (a) When a train stops under circumstances in which it may be overtaken by another train, a member of the crew must provide flagging protection, that is, go back immediately with a red flag, torpedoes and fusees by day and with a red and/or white light, torpedoes and fusees by night, a sufficient distance to insure full protection, placing two torpedoes on the rail and when necessary, in addition, display lighted fusees.

"(b) When recalled and safety to the train will permit, he may return.

"(c) When conditions require, he will leave the torpedoes and a lighted fusee.

"(d) The front of the train must be protected in the same way, when necessary, by a member of the crew.

"(e) When a train is moving under circumstances in which it may be overtaken by another train, a member of

the crew must take such action as may be necessary to insure full protection. By night (or by day, when the view is obscured) lighted fusees must be dropped off the moving train or displayed at proper intervals.

"(f) When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used.

"(g) Conductors and enginemen are responsible for the protection of their trains.

"(h) When a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear-end of the train is riding in the cabin or caboose car, the requirements as to the use of fusees will be met by dropping them off between the cabin or caboose car and pusher engine on the track the train is using, and not between that track and an adjacent track."

The flagging rule spelled out in the commission's modified order of December 19, 1966 was in essence Rule 99 of many railroads, more particularly the Pennsylvania Railroad, as it existed prior to 1945. However, the modified order of December 19, 1966 did not contain any *express* exceptions to flagging protection in automatic and other signal territory, but the December order did state: "4. That in all respects *not inconsistent herewith,* our orders issued November 22, 1965, at P.7 and at C.18018, remain in full force and effect. . . ."

On January 17, 1967 the appellant railroads filed a petition for supersedeas and stay of the commission order of December 19, 1966, to which the commission filed an answer. On January 28, 1967 the commission filed a mo-

tion to quash the carriers' appeals, on the ground that its orders as to flagging protection were made in the exercise of its rule-making power, presented no "justiciable controversy" and were not appealable, under the decision in Pa. R.R. Co. v. Pa. P.U.C., 396 Pa. 34, 152 A. 2d 422 (1959). We ordered the petition for supersedeas and motion to quash heard on the argument on the merits, all proceedings to stay meanwhile.

The present order of the commission was issued following (1) a complaint proceeding (C.18018) by the Brotherhoods against P. & L. E. R.R., and (2) a petition (P.7) by the Brotherhoods served upon all railroads operating in the state, to which the carriers filed answers. At one point the commission referred to this as a "consolidated complaint proceeding." It also takes the position, as regards the motion to quash, that this is entirely a rule making procedure, involving no actual controversy. Here a complaint and petition were filed, the carriers filed answers, extensive testimony was presented, and the commission had before it the facts showing the extent of flagging protection directed under the rules of the appellant carriers. In substance the proceedings were complaints against the carriers as to their nonobservance of allegedly necessary flagging regulations. The carriers were *ordered* and *directed* by the commission to put into effect a ruling of the commission as to flagging protection as a safety measure. Appellants should not be required to refuse to obey the commission's orders and await enforcement proceedings in order to test the legality of such orders. See §1001 of the Public Utility Law, 66 PS §1391. We feel that the present orders are appealable and Penna. R.R. Co. v. Pa. P.U.C., 396 Pa. 34, 152 A. 2d 422, supra, is not controlling on this point.

Appellants claim the order was not lawful because not the result of any procedure authorized by the Public Utility Law, viz., neither a complaint (§1001, 66 PS §1391) nor an investigation by the commission (§1008, 66 PS §1398). The substance of the proceeding should control. The orders were within the powers of the commission as authorized by the Public Utility Law, cf. §§1001, 1008 and 1013 (66 PS §1403), supra.

"Under the Public Utility Law, the Commission is given the power and jurisdiction to grant relief to railroad employees whose personal safety is jeopardized by conditions under which they work. Pa. Railroad Co. v. Pa. P.U.C., 202 Pa. Superior Ct. 114, 195 A. 2d 162 (1963); Reading Co. v. Pa. P.U.C., 188 Pa. Superior Ct. 146, 146 A. 2d 746 (1958)." Erie-Lackawanna R.R. Co. v. Pa. P.U.C., 205 Pa. Superior Ct. 291, 294, 208 A. 2d 908 (1965). The requirements of due process in the form of notice and opportunity to be heard, were complied with. The commission's jurisdiction includes those powers necessary for the exercise of the authority granted in the Act: Duquesne Light Co. v. Pa. P.U.C., 164 Pa. Superior Ct. 166, 63 A. 2d 466 (1949).

Appellants complain that the commission's order of December 19, 1966 exceeds the scope of remand, is a new and different order than that of November 22, 1965, entered without notice and due process, and is not supported by evidence. The December order is also attacked as too broad, allegedly requiring flagging for all trains on all tracks and as containing no exceptions covering station stops, interlocking plants, etc. The petition for remand was understood by all parties to relate to the difficulty in interpreting the order regarding flagging. The petition stated: "It appears that portions of the order as is-

sued are ambiguous and require clarification after the parties are given an opportunity to be heard." Appellants' answer attacked the original order of November 22, 1965 and denied that any clarification was necessary. On remand, hearings were held. Witnesses for the Brotherhoods and for the appellants Reading and Penna. R.R. testified as to the alleged ambiguities relating to flagging on "main and secondary tracks" and "yard limits." The December 19 order was within the scope of remand. The commission may, after notice and opportunity to be heard, modify or rescind previous orders (66 PS §1397). The two orders must be considered together and given a reasonable interpretation. The new order of December 19, 1966 provides that the orders of November 22, 1965 remain in full force and effect insofar as they are not inconsistent with the new order. The single issue in all these proceedings was clear, viz., under what circumstances was flagging protection necessary, under present day conditions, to the safety of the railroads and the public? As the commission points out, such exceptions to flagging requirements as "normal station stops of passenger trains" are clearly covered by the general rule as to "stops under circumstances in which [a train] may be overtaken by another train" since station stops are normally within "interlocking plants" and "absolute block territory." The order of December 19, 1966 is general and permits of exceptions in particular cases and varying conditions. In the light of the complete record disclosing the present and past practices of the railroads, there should be no serious difficulty in applying the December 19 order of the commission. In general, the order defines flagging protection and direct flagging to supplement automatic and other signal systems, subject to certain exceptions or "circumstances" where flagging is not neces-

sary. It does not require flagging of all trains on all tracks as appellants argue.

We do not exercise our independent judgment but only look to see whether the commission's findings are supported by substantial competent evidence: Pittsburgh Rwys. Co. v. Pa. P.U.C., 198 Pa. Superior Ct. 415, 427, 182 A. 2d 80 (1962). Extensive testimony was presented by the Brotherhoods and the railroads as to the need for flagging protection, and as to conditions under which such protection was required. For instance, the I.C.C. records show New York Central R.R. had three false proceed failures in 1964 while the Penna. R.R. had six. The railroads produced expert testimony tending to show that automatic signal systems furnished full protection against rear-end collisions and that flagging was not necessary, but harmful, as the engineman would rely on the flagman rather than automatic signals. The testimony as to the need for flagging protection under various conditions was conflicting and it was the function of the commission to resolve that conflict. There was evidence as to accidents allegedly due to false signals and lack of flagging protection. From the evidence the commission could properly find that "the elimination of flag protection against following trains, as has been effectuated by various carriers in Pennsylvania during recent months . . . has decreased the degree of safety available to the public and to railroad employees, ..." and could properly enter the orders requiring flagging under certain conditions.

Appellants contend that Congress has, under the Interstate Commerce Act (49 U.S.C. §26, 1958) pre-empted the field of protection against following trains in automatic block, manual block, locomotive cab signal, and centralized traffic control territory, so as to preclude state

regulation as to flagging protection. Under the Transportation Act of 1920, as amended, 49 U.S.C. §26, the Interstate Commerce Commission is given the power and has prescribed detailed rules governing block and automatic train stop signal systems. See Sharfman, The Interstate Commerce Commission, Vol. 1, pp. 275-281 (1931). However, the I.C.C. rules presently in force contain no provision as to flagging. 49 C.F.R. 136.1-136.838 (Jan. 1966).

In the absence of legislation by Congress the states are not denied the power to secure safety in the physical operation of railroad trains through their territory: Atlantic Coast Line R.R. Co. v. Georgia, 234 U.S. 280, 34 S. Ct. 829, 831, 58 L. ed. 1312 (1914); Smith v. Alabama, 124 U.S. 465, 481, 8 S. Ct. 564, 31 L. ed. 508 (1888). Recently the C.C.A. 3d, in Monongahela Connecting R.R. Co, v. Pa. P.U.C., 373 F. 2d 142, 148 (1967), affirmed this Court (206 Pa. Superior Ct. 17, 211 A. 2d 113) in conceding the state commission's power to require train line power brakes where cars transporting hot metal shipments were not engaged in "moving interstate traffic." McLaughlin, J., stated: "Where federal legislation admits of a gap the state may pass appropriate laws, to take care of needed protection, which do not conflict with their federal counterparts.", citing Atlantic Coast Line v. Georgia, supra, 234 U.S. 280, and quoting Smith v. Alabama, supra, 124 U.S. 465.

Under the Supreme Court cases there must be an actual conflict between the schemes of regulation so that both cannot stand in the same area: Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 443, 444, 80 S. Ct. 813, 4 L. ed. 2d 852 (1960) (city ordinance to abate smoke on vessels). The question whether Congress has so far exercised the exclusive jurisdiction that belongs to

it as to exclude the state, must be answered by a judgment upon the particular case: Head v. New Mexico Board of Examiners, 374 U.S. 424, 83 S. Ct. 1759, 10 L. ed. 2d 983 (1963) (state statute regulating radio advertising). In Brotherhood of Locomotive Eng. v. Chicago, R. I. & P. R. Co., 382 U.S. 423, 86 S. Ct. 594, 15 L. ed. 2d 501 (1966), the Court upheld a state statute providing for a minimum crew, stating (382 U.S. 429): "We first consider the question of pre-emption. Congress unquestionably has power under the Commerce Clause to regulate the number of employees who shall be used to man trains used in interstate commerce. In the absence of congressional legislation on that subject, however, the States have extensive power of their own to regulate in this field, particularly to protect the safety of railroad employees and the public." We conclude there is no Federal pre-emption so far as the commission's orders relating to flagging in this case are concerned.

Appellants argue that the flagging requirement of the commission's order creates a lack of uniformity, and an affirmative safety hazard, and imposes an unlawful burden on interstate commerce in violation of the Federal Constitution, art. I, §8. Admittedly, however, there is no financial burden on the carriers resulting from the flagging requirement, as the size of the crew remains the same regardless of the rule. The carriers' contention that reliance on flagmen lulls the engineer into a false sense of security and thus creates a safety hazard is opposed by the contrary opinion of other witnesses. Nor is the possible lack of uniformity as to flagging such as materially restricts the free flow of commerce across state lines. Cf. Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) (statute of state limiting the number of cars on trains

held an undue burden on interstate commerce.) Rather the regulation as to flagging here ordered by the Public Utility Commission is within the state's police power: Terminal R. Association v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 63 S. Ct. 420, 87 L. ed. 571 (1943-state statute requiring cabooses on freight trains). In Erie-Lackawanna R. R. Co. v. Pa. P.U.C., supra, 205 Pa. Superior Ct. 291, 296, 208 A. 2d 908 (1965), we held an order of the commission directing the railroad to cease attaching freight cars behind the caboose was not an unconstitutional burden on interstate commerce, quoting Southern Pacific Co. v. Arizona, supra, 325 U.S. 761 (1945), at pages 770, 771: "There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern." See also The Pennsylvania Railroad Co. et al. v. Dept. of Public Commissioners, 49 N.J. 174, 229 A. 2d 505, an opinion of the Supreme Court of New Jersey, filed April 24, 1967, where the State Commissioners' requirement as to flagging in automatic and manual signal territory was sustained on evidentiary and constitutional grounds.

The orders of the commission are affirmed.

VI.

DECISIONS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 18018

Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, Lester F. Gray, W. C. Livengood and W. L. Whitney

v.

The Pittsburgh and Lake Erie Railroad Company

ORDER

By the Commission, November 22, 1965:

This matter is before us upon complaint filed July 22, 1964 by Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania and three individuals, employees of The Pittsburgh and Lake Erie Railroad Company, alleging that a revision of Operating Rule No. 99, effectuated by the railroad on April 26, 1964, which eliminates the requirement that flag protection be provided against following trains or engines by trainmen assigned to trains operating in territory

governed by automatic block signal system rules or by traffic control system rules, constitutes an unnecessary and unreasonable hazard to operating personnel and the traveling public.

Complainants allege that the furnishing of flag protection by qualified personnel has, for many years, been standard operating practice employed by railroads throughout the United States and that such protection is calculated to maintain the high degree of safety for operating personnel and the traveling public, and particularly so, in consideration of the numerous curves and fog conditions common to the main line of the railroad.

Complainants further allege that full and complete reliance by the railroad upon automatic signals or other automatic devices is ill-conceived and ill-advised, since experience has shown that such devices cannot always be relied upon to prevent accidents of the type which manual rear-end flag protection has prevented and is intended to prevent.

Complainants request issuance of an order directing the carrier to reinstitute adequate and proper flag protection throughout that portion of its system within the Commonwealth.

Respondent, in answer filed August 5, 1964, avers that improvements in the quality and performance of its signal systems in recent years have been such as to provide the ultimate protection necessary for safe operation, without flag protection, that by obedience to a stop and proceed signal, the engineer of a following train has all the information needed to avoid and pervent a collision with a standing train ahead under any conditions and denies that hazardous conditions have been created by

reason of the April 26, 1964 revision to the standard flagging rule.

Hearings were held in Pittsburgh on September 8 and 21, and December 8, 1964 and on January 18, 1965, during which complainants submitted 12 exhibits through 8 witnesses and respondent submitted 4 exhibits and 5 witnesses.

Operating Rule No. 99 of The Pittsburgh and Lake Erie Railroad Company, as it was in effect from October 1, 1946 until April 26, 1964, reads as follows:

"99 Protection of Trains.

"When a train stops under circumstances in which it may be overtaken by another train, the flagman must go back immediately with flagman's signals a sufficient distance to insure full protection. When conditions require he will display lighted fusees and when necessary, in addition, place two torpedoes.

"When recalled and safety to the train will permit, he may return. When conditions require, he will leave the torpedoes and a lighted fusee. The front of the train must be protected in the same way when necessary by another member of the crew. When a train is moving under circumstances in which it may be overtaken by another train, the flagman must take such action as may be necessary to insure full protection.

"By night or by day when the view is obscured, lighted fusees must be thrown off at proper intervals.

"When day signals cannot be plainly seen, owing to weather or other conditions, night signals must

also be used. Conductors and enginemen are responsible for the protection of their trains.

"Note—When trains are operating under Automatic Block Signal System Rules, the requirements of Rule 99, insofar as protection against following trains is concerned, will have been complied with when full protection is afforded against trains moving at restricted speed.

"Movements on lead extending between the west end of Newell Yard and RC will be made on authority of the Yard Master.

"When main track is used, protection must be provided against all trains and engines as prescribed by the rules except between West End of No. 2 Storage Track 6900 feet west of Walford Freight Station and Walford Freight Station.

"An Oscillating Red Light displayed on rear of train is a signal for approaching trains on all tracks to stop. Trains on all tracks must not pass train displaying Oscillating Red Light until it has been ascertained that track is safe and clear for movement of train.

"The use of oscillating red light does not relieve engine and train crew from prompt and full compliance of Rules 99 and 102 of the Book of Rules.

"Cars or engines must not be coupled to the end of car to which portable oscillating red light is applied unless it is known that there is ample clearance to avoid damage to the light equipment."

The revised rule 99 as published on page 4 of Employee Time-Table No. 15, effective April 26, 1964, reads as follows:

"99 Protection of Trains.

"When a train stops under circumstances in which it may be overtaken by another train, a member of the crew must go back immediately with flagman's signals a sufficient distance to insure full protection. When conditions require he will display lighted fusees and when necessary, in addition, place two torpedoes.

"When recalled and safety to the train will permit, he may return. When conditions require, he will leave the torpedoes and a lighted fusee. The front of the train must be protected in the same way when necessary by another member of the crew. When a train is moving under circumstances in which it may be overtaken by another train, a member of the crew must take such action as may be necessary to insure full protection.

"By night, or by day when the view is obscured, lighted fusees must be thrown off at proper intervals.

"When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used. Conductors and engineers are responsible for the protection of their trains.

"Note—When operating under Automatic Block Signal System Rules or Traffic Control System Rules protection against following train or engine is not required.

"Movements on lead extending between the west end of Newell Yard and RC will be made on authority of the Yard Master."

The company's tracks generally parallel various rivers between Youngstown, Ohio, and Brownsville and Connellsville, Pennsylvania. There are many curves and it is alleged by complainants that the right of way is subject to year round fog conditions. In certain sections, there is a single main track, while in other areas, there are two, three, and sometimes four main tracks.

The signal system comprises automatic signals, interlocking signals, and controlled block signals. The automatic signals are the color light searchlight type, constructed with one, two, or three color light units.

The automatic signals display signal indications which are intended to indicate track conditions beyond the signal location. The system is primarily three aspect, two block signalling which provides a green, clear, or proceed aspect when the two blocks immediately beyond a signal are clear, displays a yellow approach aspect when only the next block is clear and the second block is occupied, and displays a red or stop aspect when the next block is occupied.

The signal indications displayed by automatic signals are initiated or controlled by train movements within the respective blocks.

The interlocking or controlled signals are under the control of an operator in a wayside tower or office. The operator is responsible for establishing the routes authorized for a particular train movement and is governed by field conditions and information conveyed to

him by the track occupancy diagrams in his tower. Field conditions control the signal aspects.

Operating rules require that a train approaching an automatic signal displaying a red aspect must stop and may then proceed at restricted speeds. The carrier's definition of restricted speed reads as follows:

> "Restricted Speed.—A speed not exceeding that which will enable a train to stop short of train, obstruction, or switch not properly lined, look out for broken rails, and not exceeding slow speed."

Slow speed is defined as "a speed not exceeding 15 miles per hour."

A train approaching an automatic signal displaying a yellow approach aspect is required to proceed preparing to stop at the next signal. A train exceeding medium speed (a speed not exceeding 30 miles per hour) must at once reduce to that speed. The reduction to medium speed must commence before passing the signal and be completed before accepting a more favorable signal indication.

According to the railroad's chief engineer, movements on the company's track, where automatic block signal and traffic control systems are in effect, are governed by a total of 412 signals, 357 being in Pennsylvania and the remaining 55 in Ohio, with 269 of these signals being controlled interlocking signals and 143 being automatic signals.

The existing signal locations are based upon their indications being visible to approaching trains for a

minimum distance of 1,000 feet (on a clear day) and providing sufficient braking distance for proper stopping of the maximum tonnage trains, to which predetermined distance, a tolerance figure of 1,500 feet is added.

Commercial power is generally used for energizing the wayside signals and standby power, for use during emergencies, is provided by batteries, constantly on charge. The battery power is also used to energize the signal controls. Failure of commercial power sources results in automatic switching to battery power. Failure of the battery power or the burning out of a signal lamp results in reliance on Operating Rule No. 27 which reads in part as follows:

> "A signal imperfectly displayed or the absence of a signal at a place where a signal is usually shown, must be regarded as the most restrictive indication that can be given by that signal, except that when the day indication is plainly seen, it will govern."

The chief engineer testified that the company's inspection and maintenance procedures for its signal system, in many instances, are more rigid than minimum Interstate Commerce Commission requirements.

The railroad's signal system was installed prior to 1900. Aside from the installation of centralized traffic control systems in certain territories, the most recent major change in the signal system occurred during the years 1939 through 1942 when older semaphore type signals were replaced by color light signals. In addition, distances between signals were increased and many signals were eliminated so as to provide increased distances for the braking of trains and to allow for increased operating speeds.

The chief engineer testified that the company's signal system is extremely adequate and that the system is designed and maintained in compliance with all existing requirements of rules, standards, and instructions of the Interstate Commerce Commission.

The system is designed for "fail-safe" operation which intends that failure of a signal to function normally due to power interruption, broken bond wire, or other cause should result in such signal displaying a more restrictive indication. Malfunctions of signals, when such involves the movement of a train or engine, are classed as "false restrictive" indications or as "false proceed" indications. A "false restrictive" indication is one which displays a signal indication more restricting in its meaning than actual track conditions provide. A "false proceed" signal failure is the failure of a system, device, or appliance to function as intended, which results in the display of signal indications which are less restricting than required. A report of such instances must be furnished to the Interstate Commerce Commission.

According to respondent's witness, the most recent "false proceed" to have occurred on its territory was reported in 1955 and was due to a faulty wire in a signal cable line which was part of a mechanical interlocking which had been in service since 1910. This interlocking was removed in 1958 when traffic control was installed in this territory.

Signal malfunctions which occur on The Pittsburgh and Lake Erie Railroad Company are reported to the Interstate Commerce Commission as part of The New York Central System operations. During the fiscal reporting year ending June 30, 1963, The New York Central System reported a total of 1,550 separate "False Re-

strictive" signals, four "False Proceed" signals and one potential "False Proceed." These statistics include occurrences in states other than Pennsylvania.

The railroad superintendent related the volume of rail traffic as including six Baltimore and Ohio passenger trains between McKeesport and New Castle Junction daily, two Pittsburgh and Lake Erie passenger trains between Pittsburgh and Youngstown, Ohio, Mondays through Fridays, and four Pittsburgh and Lake Erie passenger trains between Pittsburgh and Beaver Falls, Mondays through Fridays. Daily freight traffic averages 14 Baltimore and Ohio trains between McKeesport and New Castle Junction, 20 Pittsburgh and Lake Erie trains west of Pittsburgh, and 10 Pittsburgh and Lake Erie trains east of Pittsburgh. This witness estimated that the number of trains is about half that of 10 years ago.

The following maximum speeds are authorized by the carrier on main line tracks:

West of Pittsburgh—	Passenger trains	65 m.p.h.
	Freight trains	50 m.p.h.
East of Pittsburgh—	Passenger trains	50 m.p.h.
	Freight trains	40 m.p.h.

The superintendent testified as to his personal observations and experience relevant to Rule 99 and revisions thereto during his 42 years of experience.

The witness stated that the railroad continues to assign flagmen to its trains and continues in effect operating Rule 102 which reads as follows:

> "102. When a train is disabled or stopped suddenly by an emergency application of the air brakes

> or other causes, adjacent tracks as well as tracks of other railroads that are liable to be obstructed must, while stopping and when stopped, be protected until it is ascertained they are safe and clear for the movement of trains."

His experience with automatic signal system operations has given him confidence in the signals providing proper protection against following trains and he is of the opinion that the "divided responsibility," as he termed the situation existing under Rule 99 prior to its April 1964 revision, is not desirable. By "divided responsibility," the witness referred to the responsibility for flag protection resting jointly upon flagmen and enginemen operating in automatic block signal territory or traffic control system territory under Rule 99 prior to the April 1964 revision.

We note, however, the effect of carrier's operating Rule No. 106 on this contention, to wit:

> "106. Both the conductor and the engineman are responsible for the safety of the train and the observance of the rules, and, under conditions not provided for by the rules, must take every precaution for protection."

Carrier's Rule 19 provides for the display of marker lamps to indicate the rear of trains, as follows:

> "19. The rear of a train will be identified by marker lamps, one on each side, displayed as follows:
>
> "By day, on cars not equipped with permanent electric marker lamps, marker lamps not

lighted; on engines and cars equipped with permanent electric marker lamps, marker lamps lighted as at night.

"By night, on engines and cars, marker lamps lighted showing red to the rear, except in manual block signal system territory, or non-block territory, marker lamps lighted showing yellow to the rear when train or engine is clear of main track.

"A train not equipped to display the markers prescribed by this rule will display on rear of train; by day, a red flag, by night, a red light.

"Note—Where the rear car is equipped with permanent built-in marker lights, such lights will be used in lieu of standard marker lamps."

The superintendent expressed opinion that the safety of operations has not been impaired by the elimination of flag protection against following movements, as provided by the April 1964 revision of Rule No. 99, and feels that the signal system provides proper protection, and that since this revision there has been no accident where personal injury or property damage had occurred involving a collision between a standing and a following train.

For some years prior to October 1, 1946, when Pittsburgh and Lake Erie Rule No. 99 was modified by the insertion thereto of a note which reads:

"When trains are operating under Automatic Block Signal System Rules, the requirements of Rule

> 99, insofar as protection against following trains is concerned, will have been complied with when full protection is afforded against trains moving at restricted speed."

the railroad's management insisted that flag protection be afforded at a minimum distance of 35-car lengths to the rear of a train standing on a main line track in automatic block signal territory, and flagmen observed not complying with this interpretation were subject to disciplinary measures. Upon adoption of the October 1946 modification to Rule 99, management then decided that flagmen should be required to provide flag protection against following movements at a distance of 20 car lengths. This requirement was later relaxed in practice and the flagman was not expected to leave the caboose. Respondent's witnesses testified in this proceeding that there was no necessity for flagmen to leave the train to furnish the required flag protection against following trains moving at restricted speeds although such instructions were never issued in printed form.

Reference to Commission accident records reveals that an assistant superintendent of The Pittsburgh and Lake Erie Railroad Company testified during an Interstate Commerce Commission investigation of a rear-end collision which occurred near McKees Rocks on March 21, 1950, that Pittsburgh and Lake Erie flagmen had been instructed that full protection against trains moving at restricted speed is provided when a flagman is not less than 1,000 feet back of the rear of his train if conditions are favorable and, further, if conditions require.

During the period from October, 1946 to April 1964, the superintendent acknowledged that some flagmen con-

tinued to provide flag protection, including the placing of torpedoes on the rails, as required by Rule No. 99.

According to the witness, the adoption of identical revisions to Rule No. 99 by the parent New York Central System in 1946 and 1964 was purely coincidental. It should be noted that operating rules of The Pittsburgh and Lake Erie Railroad Company are those of The New York Central System, being one and the same publication, subject to modification as listed under special instructions in the timetable for the government of employees.

In the event that a flagman, operating in automatic signal territory, under Rule 99 as revised in April 1964, is of the opinion that he should provide rear-end flag protection against following movements, even though not required to do so by the existing rule, there is nothing in the rules to prevent the engineer from recalling him, according to the superintendent, who stated that the carrier, at the present time, had not taken exception to such arrangements and had not revised existing rules pertaining to the recall of flagmen by means of locomotive whistle signals.

Another witness for the railroad (employed for the past 16 years as supervisor of train and engine crews, with prior service as a fireman and engineman) expressed opinions on the matter based on his observations and experiences.

It has been the experience of this witness that locomotive headlights are of sufficient candle power to extend 750 feet in advance of the locomotive although he believes Interstate Commerce Commission standards require a beam approximately twice as powerful. He is of the opinion that night movements through foggy areas

are initially aware of a standing train by the reflection of the headlight upon the wheel treads of the rear car, notwithstanding the presence of illuminated, sometimes flashing type rear-end marker lamps, and also believes that color light signal indications are more definitive in fog than in clear weather conditions, although the preview distance is not increased, with no particular advantage present.

When operating locomotives in automatic block system territory under Pittsburgh and Lake Erie Rule No. 99 as interpreted prior to April 1964, this witness expected to observe a flagman on the ground, after proceeding into a block, at the entrance to which a restricting signal indication was displayed, stated that he placed no reliance on flagmen and relied solely on his personal judgment as to stopping to avoid a collision with a standing train.

He believes that flag protection contributes nothing to safe train operation in automatic signal territory and expressed the opinion that the presence of a flagman does not assist in accident prevention, that the placing of torpedoes on rails has never served any purpose, although admitting that existing rules do require a train to proceed at reduced speed for a distance of one mile after the explosion of torpedoes, regardless of signal indications.

The witness expressed further opinion that a speed of five or six miles per hour is safe for a train moving through fog, on a restricting signal. He believes that a freight train consisting of 162 loaded cars, moving at a speed ranging between 5 and 10 miles per hour, could be brought to a stop within 5-car lengths by an emer-

gency brake application, or within 12- or 13-car lengths, by a service application, pointing out that an emergency application at low speed could prove hazardous to train crew personnel as well as to equipment.

In discussing the use of train line air brakes, the witness appeared uncertain as to the time required but indicated it was either 3 or 3-1/2 seconds for an emergency application to become effective on an entire train, regardless of its length.

Another of the respondent's witnesses (employed as assistant superintendent of labor relations charged with instructing and examining train and engine service employees of the railroad relative to operating rules, timetable special instructions, and the physical characteristics of the railroad) testified to the detail of the examination.

He stated that enginemen and conductors of The Baltimore and Ohio Railroad Company who operate over Pittsburgh and Lake Erie trackage between McKeesport and Baltimore and Ohio Junction, east of New Castle, are also required to be examined by the Pittsburgh and Lake Erie examiner.

This witness interprets the April 1964 revision of Rule 99 as placing sole responsibility for protecting the rear-end of trains, stopped within automatic block signal territory, upon the engineman of following trains, which by rule should not be moving in excess of 15 miles per hour. He expressed opposition to the principle of divided responsibility and feels that it applied to flagmen and enginemen when flag protection is required, while acknowledging the existence of other divided responsibility situations in the operation of a railroad.

The witness also stated that the possibility of rear-end collisions occurring remains to the same degree under the present Rule No. 99, as existing prior to the October 1946 revision of Rule No. 99.

An operating rules examiner, in the employ of The New York Central Railroad System, testified that the flagging Rule No. 99 had been revised system wide by The New York Central System, effective April 26, 1964, by the addition of a note providing for the elimination of rear-end flag protection against following movements in automatic block signal and traffic control system territory. This witness has observed flagmen standing at distances ranging between 15 feet and 60 feet and, on occasion, at greater distances in providing flag protection against following movements expected to be moving at restricted speed and took no exception to the practice. He stated that he had on a single occasion, while employed as a trainman, performed service as a flagman.

He explained that New York Central rules place responsibility for the safe movement of trains jointly upon enginemen and conductors, except that the so-called "dual or divided responsibility" does not relate to rear-end collisions, the engineman being solely responsible for proper handling of the train insofar as use of the locomotive is concerned and of complying with the signal indications.

This witness expressed opinion that although flagmen were required to furnish full protection, including the use of signalling appliances, against following trains by the Pittsburgh and Lake Erie flagging rule prior to the April 1964 revision, he did not feel that the flagmen had any actual responsibility for flag protection, and that the existing interpretation of Rule No. 99 makes for a safer operation by eliminating the engineman's dependence

on the assistance of a flagman, so that the engineman is on the lookout for the train rather than for the flagman. He stressed the importance of immediate compliance with Rule No. 102. Under this rule, a flagman or other trainman should go behind his train as far and as quickly as possible, perhaps three-quarters of a mile or more, and furnish flag protection against trains moving in the same direction on adjacent tracks. Another employee should proceed from the front of the train in the same manner to provide protection for trains proceeding in the opposite direction on adjacent tracks.

All of complainants' witnesses expressed the opinion that the elimination of flag protection in automatic signal territory results in unsafe and hazardous conditions for operating employees.

The record indicates that, on occasion, certain Pittsburgh and Lake Erie conductors have instructed flagmen of their crews to take a forward position on trains, thereby removing these employees from their normal position on the rear of the train, from where they are required to properly furnish the rear-end flag protection which must be provided for adjacent tracks, in the event of emergency stops, in accordance with operating Rule No. 102.

One witness (employed by the railroad as a brakeman and conductor for 23 years) stated that his personal flagging practice remained unchanged over the years until the April 1964 revision, regardless of the changing interpretations placed on Rule 99 by the carrier. He feels that Rule No. 108 which reads:

> "108. In case of doubt or uncertainty, the safe course must be taken."

is paramount in safe train operation.

A telegraph operator (employed by the railroad for 14 years) related observations of "misread" signals while he performed duty as a towerman at Connellsville. He stated that on three occasions, namely, November 17 and 18, 1963 and on January 5, 1964, enginemen had difficulty reading a signal controlled by the towerman, which displayed a red or stop block indication, having interpreted the signal as displaying a yellow or restricting indication and on one occasion the train was operated beyond the signal causing the engine to run through a switch.

Investigation revealed that the sun's rays had been responsible for these "misreadings" and a longer hood has been attached to the signal to shield the color light from the sun.

Another complainant witness (a qualified conductor and trainman for 23 years) recalled that the rules examiner had instructed him, during an examination on flagging qualifications in 1942 or 1943, to comply with Rule 99 as though there were no wayside signals and to provide rear-end protection at a "sufficient distance." He has continued to follow the practice inasmuch as the original instructions have never been altered or rescinded by the rules examiner. He related an experience which occurred during the summer of 1964 wherein two controlled interlocking signals governing separate tracks at McKeesport displayed signal indications which were not properly reflected on the tower operator's panel board due to a malfunctioning of the signal system. The indication received was more restrictive, however, than the tower operator's diagram indicated and this signal was obeyed.

A locomotive engineman (in the employ of the carrier since 1918 and with supervisory experience totaling 15 years) testified to the reduced visibility of the color

light signals during fog conditions and stated that the rear-end marker lamps provide the initial indication of a preceding train.

Based upon his knowledge of train line air brakes and tests conducted thereon by the Westinghouse Air Brake Company, he is of the opinion that an elapsed time of one-tenth second is required for the brakes to become applied to each car of a train, or approximately 16 seconds for a service application throughout a 162 car train. He estimates that the same train, moving at 10 miles an hour could be stopped in a distance of 12 to 14 car lengths, or approximately 700 feet, by an emergency application.

This witness avers that he placed reliance on flagmen furnishing protection against preceding movements, when he operated in blocks which he entered on a stop and proceed signal, and he feels that the elimination of flagging in automatic territory decreases the safety of train operation. He referred to the additional safety provided by torpedoes and fusees, but questions the adequacy of the marker lamps now in use, averring that the modern lamps are less efficient and dependable than those formerly provided by the carrier. He testified that he has observed trainmen providing rear-end flag protection against following movements since April 1964.

He is also of the opinion that the railroad company has a responsibility to its employees and to the public to maintain the practice of flag protection.

Another witness for complainants (employed by the railroad as a brakeman and conductor for approximately 24 years) related the circumstances surrounding an accident which occurred on the Pittsburgh and Lake Erie in August 1957, wherein two locomotives hauling a cabin car

and proceeding on a clear signal, sideswiped the locomotive of a work train which was partially fouling a crossover between an eastbound main track and a westbound main track. Investigation developed that the conductor of the work train crew had aligned a switch for through movements on the westbound track, while the locomotive of the work train was still fouling the westbound track and that rust accumulations on the crossover rails and jack posts had interfered with the track circuits, thereby affecting the automatic signal on the westbound track.

Three additional trainmen, employed by The Pennsylvania Railroad Company, presented rebuttal testimony on behalf of complainants. Each related their respective experiences in providing flag protection against following movements which collided with standing trains. One instance involved the furnishing of protection to adjacent tracks following a collision at or near Leetsdale, Pennsylvania, a second instance involved movements on a secondary track, signalled only at either entrance and on which flagging was not required by rule and the third accident occurred on a track not protected by automatic wayside signals but only by cab signals installed in locomotives to indicate track conditions in much the same manner as wayside signals, and in territory where flagging was required at the time of the collision.

We have no evidence before us indicating that the rule change here involved has resulted in any reductions in the size of respondent's train crews nor that any such reduction is contemplated. The carrier apparently continues to assign brakemen to the respective crews in the same quantity as prior to the April 1964 change in Rule 99.

It appears that the automatic signal system installed on The Pittsburgh and Lake Erie Railroad, as outlined in this record, is adequate for safe movements with its "fail-safe" construction. However, we are not impressed with respondent's contention that the abolishment of rear-end flagging results in a safer condition, nor with the concern expressed by several witnesses about the so-called "divided responsibility" or "dual responsibility" theory supposedly existing where flagging is practiced. Flagging, properly performed, certainly serves a vital purpose. As stated by complainants in their brief, good and sufficient reason for the rule change has not been shown conclusively in this proceeding.

Respondent, in its brief, contends that the real function of a train flagman became meaningless in view of the general laxity in instructions and enforcement of the 1946-1964 version of Rule 99 and a wide variation in individual methods of employee compliance with the rule.

We are concerned chiefly as to whether adequate protection and safety would continue under the revised Rule 99 and we would be remiss in our concern for safety should we ignore the function of train flagmen.

The evidence would appear to indicate that a trainman, providing flag protection, is an added safety factor so long as he is available to give additional warning and in the prevention of an accident in the event an engineman, possibly alone in a locomotive cab, misreads a signal. Wayside signals could possibly be subject to damage from protruding ladings thereby causing malfunction and the display of false proceed indications, as well as the intended false restrictive indications.

It appears that many railroads, having installed a near perfect system of block signals, have destroyed its effectiveness by establishing the "permissive block" whereby a following train is given discretionary power to run into a block already occupied. Exceptions are made to the intent of "stop and proceed" indications in the case of trains exceeding certain tonnage requirements and operating on ascending grades, whereby such trains are not required to stop prior to entering occupied blocks but proceed on restricted speed.

We must wonder whether the established rules have been diluted and watered down by amendments and revisions to such an extent as to make it very difficult for employees simultaneously to meet the requirements and obey the rules.

Assuming a signal failure or malfunction resulting in the so-called "false proceed" circumstances (which has happened infrequently) a flagman going back a "sufficient distance" behind a standing train could certainly assist materially in warning a following movement, regardless of the rate of speed, of the presence of a train ahead, by his presence on the ground, the placing of torpedoes, and the display of flags, lamps and fusees, and it is the opinion of this Commission that such secondary protection should continue to be available.

The flagman must take into consideration grades, curves, and condition of the rail and weather in determining the distance he must go back to properly protect his train.

It is the primary responsibility of the carriers to provide safe and adequate service to the public, but it

is the duty of this Commission to see that the carriers fulfill that obligation.

We are of the opinion that the revision of P & L E Rule No. 99 impairs and jeopardizes the safety of the public and railroad employees and that reasonable safety of the traveling public as well as railroad employees and operations requires the retention of flag protection for a train moving under circumstances in which it may be overtaken by a following train and for a train which stops under circumstances in which it may be overtaken by a following train.

Therefore, we shall direct The Pittsburgh and Lake Erie Railroad Company to conform its Operating Rules with Rule 16 of the Railroad Regulations adopted this date.

Upon full consideration of the matters and things involved, we are of the opinion and find that the elimination of flag protection against following trains operating under automatic block signal systems, as effectuated by The Pittsburgh and Lake Erie Railroad Company by a revision to its Operating Rule No. 99, effective April 26, 1964, has decreased the degree of safety available to the public and respondent's employees, and that continued adherence to the existing no flagging practice would seriously impede efforts to increase railroad safety and serve to decrease the margin of safety provided for rail operations; Therefore,

It Is Ordered:

1. That the instant complaint be and is hereby sustained.

2. That The Pittsburgh & Lake Erie Railroad Company forthwith require that passenger and freight trains on its line of railroad within the Commonwealth be operated in a manner consistent with Rule 16 of the Commission's Railroad Regulations.

Pennsylvania Public Utility Commission
(signed) George I. Bloom
Chairman

Attest:

Secretary

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition 7

In re: Petition of Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, C. J. Sludden, W. P. Fullerton and W. D. Smith—For a regulation or regulations requiring that a member of the crew must go back immediately with proper flagging equipment a sufficient distance to insure full protection when a train stops under circumstances in which it may be overtaken by another train, regardless of whether or not such train or trains are operating under locomotive cab, automatic block or manual block system rules.

ORDER

By the Commission, November 22, 1965:

This matter is before us upon petition filed October 26, 1964 by Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, C. J. Sludden, chairman, and a trainman retaining seniority rights on Monongahela Connecting Railroad Company, W. P. Fullerton and W. D. Smith, both local lodge officers of Brotherhood of Railroad Trainmen and trainmen in the employ of The Pennsylvania Railroad Company.

Petitioners allege that the elimination of flag protection for stopped trains, as has been effected by the action of some railroads in the Commonwealth in revising pertinent operating rules, creates an unreasonable risk of harm to train crews and to the traveling public. Petitioners further allege that the elimination of flag protection has resulted in injury and death and are of opinion that the inherent danger is such that a regulation prohibiting the elimination of flagging should issue before the lack of proper protection becomes more widespread and before further injury or fatality. Petitioners request that the Commission promulgate a regulation requiring that a crew member must go back immediately with proper flagging equipment a sufficient distance to insure full protection, when a train stops under circumstances in which it may be overtaken by another train, regardless of whether or not such train or trains are operating under locomotive cab signals, automatic block signals, or manual block signal system rules.

Answers were filed by individual railroads during the period from November 12, 1964 through January 15, 1965. General denials of petitioners' allegations were entered by:

Norfolk and Western Railway Company
The Baltimore and Ohio Railroad Company
Bessemer and Lake Erie Railroad Company
McKeesport Connecting Railroad Company
The Pittsburgh and Lake Erie Railroad Company
Reading Company
Western Allegheny Railroad Company
Pittsburgh, Chartiers and Youghiogheny Railway Company

The Monongahela Railway Company
Youngstown and Southern Railway Company
Montour Railroad Company
Erie-Lackawanna Railroad Company
The Central Railroad Company of New Jersey
The Pennsylvania Railroad Company
The Dela are and Hudson Railroad Corporation
The New York Central Railroad Company

However, four additional carriers; namely,

Lehigh Valley Railroad Company
Western Maryland Railway Company
Union Railroad Company
The Pittsburg and Shawmut Railroad Company

deny that their lines had effected any change in their respective flagging requirements, while The Monongahela Connecting Railroad Company and Aliquippa & Southern Railroad Company aver that operations on its lines are limited to yard and switching movements to which flagging rules are not applicable. The New York Central Railroad Company further alleges that the Commission lacks jurisdiction in the premises. The Pittsburg and Shawmut Railroad Company on March 26, 1965 filed a motion to dismiss the petition.

Hearings were held in Harrisburg on February 8, 9, and 10; March 8, 9, 10, 11, 12, 29, and 30; and in Philadelphia on April 13, 14, 15 and 23, 1965, during which 42 exhibits were submitted through 70 witnesses. Oral argument was heard by the Commission on July 27, 1965, at which all counsel desirous of arguing their respective positions appeared.

For many years it was the custom and practice of all railroads operating within Pennsylvania to require, generally by application of Rule 99, that stopped trains be protected against following movements by flagmen with flagging equipment, and the carriers have considered this rear-end flag protection essential to safe operation.

The distance at which rear-end flag protection should be furnished is necessarily dependent upon the physical characteristics of the line of railroad, the topography, curvatures and grades, and current weather and atmospheric conditions.

Flagmen operating under old Rule 99 were expected to secure torpedoes to the rail and to display burning fusees, flags, and illuminated hand lamps when necessary, supplementing the basic traffic control system, whether it be manual block signals, automatic block signals, or locomotive cab signals.

Automatic signalling by the use of track circuits was first developed in 1872. The underlying principle of track circuiting is its ability to detect and register the presence of a train, engine, or car on a track. These circuits are also designed so as to detect a broken rail, an open switch, or an open drawbridge.

An automatic track signalling system is designed on a "fail-safe" principle, whereby any break in or shunting of a track circuit will actuate a restrictive signal aspect. It is possible that deposits of foreign matter, such as sand, rust and grease on rails or on engine or car wheels may interfere with the intended circuit shunting. Undesired electrical connections between control circuits of associated signals may cause "false-proceed" signal aspects to be displayed and, in addition, certain light weight track

maintenance and inspection equipment will not ordinarily shunt track circuits.

Trains or engines operating in manual block territory are governed by a signal indication displayed at the entrance to a block, which may extend for a considerable distance, possibly 50 miles, whereas in automatic signal territory, signals are spaced at intervals, generally not exceeding 2 miles apart.

Flag protection remains an operating requirement in manual block territory of most carriers. Exceptions are Lehigh Valley Railroad Company and those portions of The Pennsylvania Railroad Company designated in employee timetable as "absolute" block territory.

Preliminarily, there was a motion to dismiss filed by the Pittsburg and Shawmut Railroad, denying that any rule would be applicable to it, in view of the fact that it had not made any changes in the original Rule 99 requiring flagging under the circumstances referred to above. The other railroads responded on the merits and generally urged the Commission to dismiss the petition. One railroad, New York Central, did raise in its answer the question of our jurisdiction.

Further, the respondent railroads contend that the petition should have been dismissed because it did not invoke a procedure authorized by the Public Utility Law and, consequently, that the Commission lacks jurisdiction. The respondents alluded to Section 1001 relating to complaints, 66 P.S. §1391, and Section 1008 relating to investigations, 66 P.S. §1398, and aver that the petition here is neither a complaint nor a pleading which initiated an investigation; nor could it be, they aver, classified as a complaint because it was not filed by a "person" pur-

suant to Section 1001 and, furthermore, because its own style indicates that it is a "petition" rather than a complaint.

It is our opinion that the position of the respondents concerning our procedure and jurisdiction is without merit. This matter is not to be determined by the genesis of the case nor by the title, caption, or style given to the pleadings filed.

Our jurisdiction includes those powers necessary and proper for the exercise of the specific powers enumerated in the Public Utility Law. See Duquesne Light Company v. Pa. P.U.C., 164 Pa. Superior Ct. 166.

The procedure followed in this case amounted to a consolidated complaint proceeding. If separate complaints had been required against each railroad, the records would have become cumbersome and unwieldy by reason of the necessary cross-incorporations by reference. The procedure herein eliminated unnecessary expense and duplication and at the same time gave all parties an opportunity to be heard. If anything, the procedure may have been unfair to the complaining petitioners, not to respondents, since the cross-examination by counsel for the railroads provided the latter with a group approach, allowing all of their legal talent to be coordinated and aimed against the Brotherhoods' witnesses—what one railroad may have overlooked, the other would remember or note for the benefit of all.

Moreover, under the holding in Penna. R. Co. v. Pa. P.U.C., 396 Pa. 34, we could have issued this rule even without prior hearing, and no appeal could have been taken until after the regulation had been applied to a

specific railroad. We have, therefore, gone further than was strictly required by law by our hearings in this case.

Furthermore, under Section 1013, 66 P.S. §1403, we are specifically empowered to conduct "such other hearings," though informal, "as may be required in the administration of the powers and duties conferred" on this Commission. The fact that we proceeded herein with unrequired formality does not nullify our express power to secure the facts necessary to administer the Public Utility Law and the full intent thereof.

The record does not indicate that the elimination of flag protection has yet resulted in any wholesale reduction in the size of train crews or that the revised rule will result in any financial savings to the carriers.

The operation of today's lengthy and heavy tonnage trains at extremely slow or creep speeds is at times difficult to accomplish, hence there is permitted a variance in the requirement that trains actually stop at a "stop and proceed" signal indication, at specified "grade" or "tonnage" signal locations due to excessive grades.

One carrier, Erie-Lackawanna Railroad Company, has revised its flagging rule so as to eliminate flag protection in automatic signal territory, except that:

> "1. All trains carrying passengers must be both protected and protected against.
>
> "2. When unusual atmospheric conditions prevail, such as heavy rain, snow, fog and smoke which unduly restrict normal visibility, protection must be provided by and for all trains."

Carrier witnesses repeatedly contend that the removal of a properly functioning flagman results in a greater degree of safety for rail operations in any territory.

For decades railroad companies operating in the Commonwealth have required flag protection and have insisted upon strict compliance with the flagging rule. Now, during recent months, the carriers collectively have effectuated revisions to the standard rule but have presented no convincing evidence of recent innovations in the methods of railroad signalling and contend that their basic concern is the elimination of "divided responsibility," the elimination of train delay in awaiting the return of flagmen and the freeing of flagmen for other duties.

The operating rules of the respective railroads vary with respect to flag protection, as shown by the following:

Flag protection against following movements on the same track in automatic block signal territory and in manual block territory has been eliminated by

Lehigh Valley Railroad Company

The Pennsylvania Railroad Company (in absolute block, manual block territory)

Flag protection against following movements on the same track in automatic block signal territory has been eliminated by

Bessemer and Lake Erie Railroad Company

The Delaware and Hudson Railroad Corporation

The New York Central Railroad Company

The Pittsburgh and Lake Erie Railroad Company

Reading Company

and is proposed to be eliminated by

The Baltimore and Ohio Railroad Company

Erie-Lackawanna Railroad Company

Union Railroad Company

Flag protection against following movements is required under certain circumstances by

The Central Railroad Company of New Jersey

Erie-Lackawanna Railroad Company

Rule requiring flag protection against following movements has not been revised by

The Monongahela Railway Company

Montour Railroad Company

The Pittsburg and Shawmut Railroad Company

Western Allegheny Railroad Company

Youngstown & Southern Railway Company

The Pittsburgh, Chartiers & Youghiogheny Railway Company has not established a flagging rule for its operations.

As reiterated by numerous witnesses, an engineman observing a stop and proceed signal indication is put on notice to observe the track ahead for occupance by a train or other obstruction, whether or not flagging is required by rules, and must control train speed so as to stop within his range of vision.

A number of managerial level witnesses appearing in behalf of respondents expressed their opinion that the elimination of flagging against following movements on the same track in automatic block signal territory provides a safer operation, that flagging is not required at interlocking plants, railroad grade crossings where conflicting movements occur, nor in traffic control territory where opposing movements rely solely on signal protection and compliance with the rules by the engineer.

Testimony was presented relative to the design, construction, and maintenance of an automatic block signal

system, including the "fail-safe" principle, whereby a failure of the system would cause the display of a more restrictive signal aspect than is warranted by track conditions.

Operating rules generally provide that the absence of a signal at a location where a signal is usually displayed, or an improperly displayed signal, require that an engineman must act as though he had received the most restrictive aspect possible at the particular location.

The spacing of signals is related to fixed points such as interlockings, terminals and railroad crossings, at grade. Other considerations include visibility, grade, curvature, type of rail, maximum speeds, and braking distances. In addition, signals must meet requirements established by the Signal Inspection Act, under which the Interstate Commerce Commission promulgates rules, standards, and instructions governing the construction, installation, testing, and maintenance of signals and signal systems.

The Interstate Commerce Commission requires that railroads file with that agency monthly reports of signal malfunctions, classified as "false proceed" failures and as "false restrictive" failures. These reports are compiled on a system basis and we are unable to determine the frequency of such malfunctions occurring within Pennsylvania. The available information indicates that on railroads of the United States a total of 58 false proceed failures occurred during the fiscal year ending June 30, 1964.

False restrictive failures occur far more frequently and have the effect of slowing or delaying train movements. For example, The Pennsylvania Railroad Com-

pany reported 2,422 such failures during 1964 on its system.

For nearly 20 years, The New York Central, Pittsburgh and Lake Erie, and Pennsylvania Railroad Companies have operated with a modified Rule 99, to the extent that flagmen were then required to protect against following movements at restricted speed. Counsel for these carriers make the averment in a jointly filed brief that the time for petitioners to attack the placing of full reliance on automatic signals has long since expired on these lines, and consequently on all railroads.

A number of petitioners' witnesses indicated that the handling and stopping of trains moving at restricted speeds is difficult and that the physical characteristics of the railroad and unfavorable atmospheric conditions serve to limit the visibility available to an engineman and contend that the use of torpedoes and fusees by a flagman could be very beneficial, in fact, very essential to safe operation.

There is testimony concerning the so-called "grade" or "tonnage" signals which are specific automatic signals, identified in various ways on different railroads. Though these grade signals may display a stop and proceed aspect, such indication need not be accepted as such under certain circumstances. Trains meeting specified tonnage and train length capacities may accept such signals, which are generally located on ascending grades, as displaying the more favorable restricting aspect, so as to retain momentum and avoid possible stalling or inability to move, if stopped at such signal.

Operating rules of Bessemer and Lake Erie Railroad permit trains to enter occupied blocks without stopping at the entrance of such block.

Witnesses for petitioners related their individual experiences with various signal failures and malfunctions, several of which incidents were disclaimed by witnesses for the particular carrier involved, while other occurrences were confirmed by carrier investigations.

Flagging rules of the various railroads continue to require full flag protection in manual block territory, in view of the varying length of manual blocks, which may extend for 25 or more miles. Exceptions are found on Lehigh Valley Railroad Company, which does not require flag protection in manual block territory, under normal circumstances, and on The Pennsylvania Railroad Company, which line does not require flag protection in "absolute blocks" which are designated by special timetable instructions. Under normal operating conditions, trains are not permitted to enter an occupied block under "absolute block" rules, although exceptions are made in emergency situations and protection in this case is afforded by train order.

Testimony was presented to indicate that some degree of confusion and difference of opinion exists among operating and supervisory employees relative to the flagging rule modifications and their application on specific portions of a railroad.

Determination as to the designation of specific tracks as absolute block or permissive block territory is dependent upon the frequency and volume of rail traffic on the particular line of railroad.

Varying methods of operation and promulgation of special instructions for certain sections of track add to the complexities of railroading and demand properly qualified and experienced operating personnel.

The Lehigh Valley Railroad Company manual block system rules apply only on two isolated branches in Pennsylvania, the twenty-one mile State Line and Sullivan Branch and the two and one-half mile Auburn Branch. Train movements on the former are limited to about three per week, with no opposing or following train movements, and most of the Auburn Branch is within yard limits and following movements are rare.

Carrier witnesses advance the argument that enginemen relying on the presence of flagmen may relax their vigilance and tend to operate in excess of authorized speeds. Respondents further contend that sole responsibility for rear-end collisions should rest upon the enginemen of following trains and that compliance with the rules will avoid collisions.

Respondents aver that petitioners' allegations are not supported by the record herein and that elimination of rear-end flag protection provides operations as safe as or safer than under the former rules which required rear-end flagging without exception.

Various witnesses for the railroads testified to the effect that modifications to the flagging rules have been under consideration for some time and are intended solely to provide improved safety.

As we stated in order issued June 25, 1962 at C. 17733, we would be remiss in our concern for railroad safety should we fail to take notice of the function of train flagmen, since protection of trains is of prime importance. The testimony herein and information of record indicates to us that the positioning of a qualified trainman at the rear of trains where he is available to provide immediate rear-end flag protection, augmenting that furnished by

signals, be they manual or automatic, remains an essential and desirable practice.

The collective testimony and evidence of record does not provide a basis for our finding that the almost total elimination of flag protection by the railroads of Pennsylvania is a progressive step forward in the field of safety.

Undoubtedly, automatic signalling functioning as intended, as the record indicates it does nearly 100 per cent of the time, augmented by locomotive cab signals, automatic train-stop devices, two-way radio and telephone communication facilities, and the existence of tangent track throughout a rail system along with constantly clear daylight weather, would present conditions and circumstances whereby manual flag protection would be of minimal benefit in furnishing protection against following trains on the same track. However, in consideration of the realities, present day railroad operation does not attain this utopian ideal.

Operating rules continue to require that flag protection be furnished immediately, in either direction, on tracks adjacent to the track occupied by a train which comes to an emergency stop or when adjacent tracks are known to be obstructed in any manner so that the repeated concern expressed by carrier witnesses relative to dividing responsibility between flagmen and enginemen is unimpressive and we are not convinced that the railroads have shown conclusively in this proceeding that good and sufficient reason exists for this rule change.

The "permissive block" principle in use both in automatic block and manual block territory appears to diminish the intended effectiveness of block signals, and exceptions are established for "stop" and "stop and proceed"

signal indications, permitting certain tonnage trains to enter occupied blocks without first being brought to a stop.

It is the opinion of this Commission that elimination of the protection furnished by a properly functioning flagman impairs and jeopardizes the safety of the public and railroad employees and that reasonable safety of operations requires the retention of flag protection for a train moving under circumstances in which it may be overtaken by a following train and for a train which stops under circumstances in which it may be overtaken by a following train.

Therefore, we shall direct the railroads operating in the Commonwealth of Pennsylvania to require flag protection against following trains on the same track.

Upon full consideration of the matters and things involved, we are of the opinion and find that the elimination of flag protection against following trains, as has been effectuated by various carriers in Pennsylvania during recent months, by the revision of the operating rules governing flagging, has decreased the degree of safety available to the public and to railroad employees, and that continued adherence to the "no flagging" practice would seriously impede efforts to increase railroad safety and serve to decrease the margin of safety provided for rail operations; Therefore,

It Is Ordered:

1. That the prayer of Petition No. 7 be granted.

2. That the motion to dismiss the petition filed March 26, 1965 by The Pittsburg and Shawmut Railroad Company be denied.

3. That all railroads operating in the Commonwealth of Pennsylvania, within 30 days of service hereof, promulgate appropriate operating rules and special instructions for the government of their respective employees so as to require that flag protection be provided against following trains occupying the same track, by a properly qualified flagman or trainman using standard flagging equipment, for trains moving on main or secondary tracks, under circumstances in which such trains may be overtaken by following trains and for trains stopped under circumstances in which they may be overtaken by following trains, in manual block signal, automatic block signal, centralized traffic control or locomotive cab signal territories, except within the limits of interlocking plants, at stations where passenger trains are making normal station stops, within the limits of a classification or storage yard and manual block territory protected by an absolute block.

Note: When trains are operating under automatic block signal system rules (locomotive cab signal or centralized traffic control signal rule), the requirements of flagging, insofar as protecting against following trains is concerned, will have been complied with when full protection is afforded against trains moving at restricted speed.

4. That the above requirement be incorporated in the Railroad Regulations of this Commission and be designated Rule 16 thereof.

Pennsylvania Public Utility Commission

(signed) George I. Bloom
Chairman

Attest:

Secretary

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition 7 and Complaint Docket No. 18018

In re: Petition of Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, C. J. Sludden, W. P. Fullerton, and W. D. Smith—For a regulation or regulations requiring that a member of the crew must go back immediately with proper flagging equipment a sufficient distance to insure full protection when a train stops under circumstances in which it may be overtaken by another train, regardless of whether or not such train or trains are operating under locomotive cab, automatic block or manual block system rules.

C. 18018—Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania, Lester F. Gray, W. C. Livengood, and W. L. Whitney v. The Pittsburgh and Lake Erie Railroad Company.

ORDER

By the Commission, December 19, 1966:

In executive session, held on March 7, 1966, this Commission moved to petition the Superior Court for remission of the record in these proceedings, in consideration of the incidents of noncompliance, confusion, and multiplicity of interpretation by the various carriers and the petitioners at P. 7, of the new Rule 16 of the Commission's Railroad Regulations, adopted November 22, 1965.

Rule 16 directs that all railroads, operating in Pennsylvania within 30 days of service thereof, promulgate appropriate operating rules and instructions for the government of their respective employees so as to require that rear-end flag protection be provided against following trains.

On March 15, 1966, the Court remanded the case for further hearing and/or oral argument and reconsideration and directed that, upon entry of an order by the Commission, the record be returned forthwith to the Superior Court.

Further hearings were held May 12, and July 7, 1966 at Harrisburg and briefs subsequently were submitted by Lehigh Valley Railroad Company, The Pennsylvania Railroad Company, Reading Company, and Co-Operative Legislative Committee, Railroad Brotherhoods in the State of Pennsylvania et al.

Commencing in early January 1966 and continuing until the present time, the Commission has been furnished with advice which indicates that adherence to Rule 16 lacks uniformity and on some railroads is practically nonexistent and, in several instances, is thwarted by misunderstanding as to what is meant by the phrase "standard flagging equipment."

The record further indicates that some confusion has resulted from the wording contained in paragraph 3 of our order, "* * * for trains moving on main or secondary tracks * * *"; and also our phrasing "* * * within the limits of a classification or storage yard * * *."

In addition, several carriers have seen fit to apply to the new Rule 16 the reference to "main track" which appears in Part I (Definitions) of the Commission's Rail-

road Regulations. This definition, which relates to minimum clearance standards, previously adopted, reads as follows: "Main Track on which authorized speed of freight trains is 25 miles per hour or less will be considered as yard track," and the application of same to the matter of flag protection appears to be an unwarranted distortion of the intent of our rule.

In respect to the carriers' contention of lack of understanding of our phrase, "standard flagging equipment" there appears to be little, if any, merit to this position. Had we suspected that the carriers, who for decades have furnished all necessary flagging equipment for use of their employees, where required by their operating rules, would have, at this late date, raised such a question we could have been more explicit. However, there should be no doubt in any reasonable mind that the flag protection required should be furnished by the use of industry-recognized flagging equipment; namely, a red flag, torpedoes and fusees by day, a red and/or white light or a light capable of producing both aspects, and torpedoes and fusees by night.

Furthermore, upon review of the supplemented record and reconsideration of all pertinent facts contained therein and the pleadings of the various respondents, we are convinced that our finding, as propounded in the November 22, 1965 order; viz., that the safety of the public and of railroad employees requires flag protection under all circumstances, when a train is stopped or when a train is moving under circumstances in which it may be overtaken by another train, is reasonable and well supported by the record, that the basic requirements of our order are in the general interest of the public and should not be materially disturbed. However, in order to eliminate the

apparent confusion and misinterpretation of certain diction used in our existing order, flagging should be performed on main tracks, secondary tracks, or on any tracks used for the movement of trains, where a train, stopped or moving, may be overtaken by another train, whether within a yard proper; adjacent to the entrance to a yard; or in areas designated by a railroad as yard limit territory.

In the circumstances, and being satisfied that the proposed changes are in the interest of safety, and in the public interest generally, we find and determine that our order issued November 22, 1965 in the Petition 7 proceeding should be modified and it also follows that our findings in C. 18018 should be modified. We are further of the opinion and find that the proper rule to be placed in effect and rigidly enforced and adhered to is Rule 99 as it existed prior to 1945; Therefore,

It Is Ordered:

1. That numbered Paragraph 3 on page 13 of our order issued at P. 7, November 22, 1965, which reads as follows, to wit:

> "3. That all railroads operating in the Commonwealth of Pennsylvania, within 30 days of service hereof, promulgate appropriate operating rules and special instructions for the government of their respective employees so as to require that flag protection be provided against following trains occupying the same track, by a properly qualified flagman or trainman using standard flagging equipment; for trains moving on main or secondary tracks, under circumstances in which such trains may be overtaken by following trains and for trains stopped under circum-

stances in which they may be overtaken by following trains, in manual block signal, automatic block signal, centralized traffic control or locomotive cab signal territories, except within the limits of interlocking plants, at stations where passenger trains are making normal station stops, within the limits of a classification or storage yard and manual block territory protected by an absolute block.

"Note: When trains are operated under automatic block signal system rules (locomotive cab signal or centralized traffic control signal rule), the requirements of flagging insofar as protecting against following trains is concerned, will have been complied with when full protection is afforded against trains moving at restricted speed."

be and is hereby modified to read as follows:

3. That all railroads operating in the Commonwealth of Pennsylvania, within 45 days of service hereof, promulgate appropriate operating rules and special instructions for the government of their respective employees in conformity with the following:

(a) When a train stops under circumstances in which it may be overtaken by another train, a member of the crew must provide flagging protection, that is, go back immediately with a red flag, torpedoes and fusees by day and with a red and/or white light, torpedoes and fusees by night, a sufficient distance to insure full protection, placing two torpedoes on the rail and when necessary, in addition, display lighted fusees.

(b) When recalled and safety to the train will permit, he may return.

(c) When conditions require, he will leave the torpedoes and a lighted fusee.

(d) The front of the train must be protected in the same way, when necessary, by a member of the crew.

(e) When a train is moving under circumstances in which it may be overtaken by another train, a member of the crew must take such action as may be necessary to insure full protection. By night (or by day, when the view is obscured) lighted fusees must be dropped off the moving train or displayed at proper intervals.

(f) When day signals cannot be plainly seen, owing to weather or other conditions, night signals must also be used.

(g) Conductors and enginemen are responsible for the protection of their trains.

(h) When a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear-end of the train is riding in the cabin or caboose car, the requirements as to the use of fusees will be met by dropping them off between the cabin or caboose car and pusher engine on the track the train is using, and not between that track and an adjacent track.

2. That numbered paragraph 4 on page 13 of our order issued at P. 7, November 22, 1965, which reads as follows, to wit:

"4. That the above requirement be incorporated in the Railroad Regulations of this Commission and be designated Rule 16 thereof."

be and is hereby modified to read as follows:

4. That the above-revised paragraph 3 be incorporated in the Railroad Regulations of this Commission and be designated Rule 16 thereof.

3. That numbered paragraph 2 on page 18 of our order issued at C. 18018, November 22, 1965, which reads as follows, to wit:

> "2. That The Pittsburgh and Lake Erie Railroad Company forthwith require that passenger and freight trains on its line of railroad within the Commonwealth be operated in a manner consistent with Rule 16 of the Commission's Railroad Regulations."

be and is hereby modified to read as follows:

> 2. That The Pittsburgh and Lake Erie Railroad Company forthwith require that passenger and freight trains on its line of railroad within the Commonwealth be operated in a manner consistent with Rule 16 of the Commission's Railroad Regulations as revised this date.

4. That in all respects not inconsistent herewith, our orders issued November 22, 1965, at P. 7 and at C. 18018, remain in full force and effect, and that the record herein be returned to the Superior Court of Pennsylvania forthwith.

Pennsylvania Public Utility Commission
(signed) George I. Bloom
Chairman

Attest:

Secretary